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ABSTRACT

Arguing that there is no better opportunity to teach about the law than when a sensational trial overwhelms the media, this booklet outlines the legal issues involved in the O. J. Simpson trial and presents teaching methods for introducing these issues to students. In a discussion of the trial phase, the booklet explains the concepts of reasonable doubt, preponderance of evidence, elements of murder, special circumstances as well as the categories of direct and circumstantial evidence. Sections on the sentencing and appeals phases of the trial describe the significance of aggravating and mitigating factors and the grounds and procedures for appeal. A question and answer column elucidates the most frequently asked legal questions regarding the trial such as Simpson's plea, the evidence, the relevance of DNA tests, the likelihood of Simpson testifying, and the significance of pretrial publicity. The teaching methods outlined in the booklet call for students to complete and discuss a worksheet on the facts of the trial and to play the role of judge in evaluating the evidence. The booklet also provides the results of a poll of 311 attorneys taken in September, 1994 on the Simpson trial. A copy of the questionnaire is included for distribution to students. A glossary explains the legal terms used throughout the booklet. (JD)

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On Trial in California:
THE O. J. SIMPSON CASE

by Anita Richardson

A Teaching Tool

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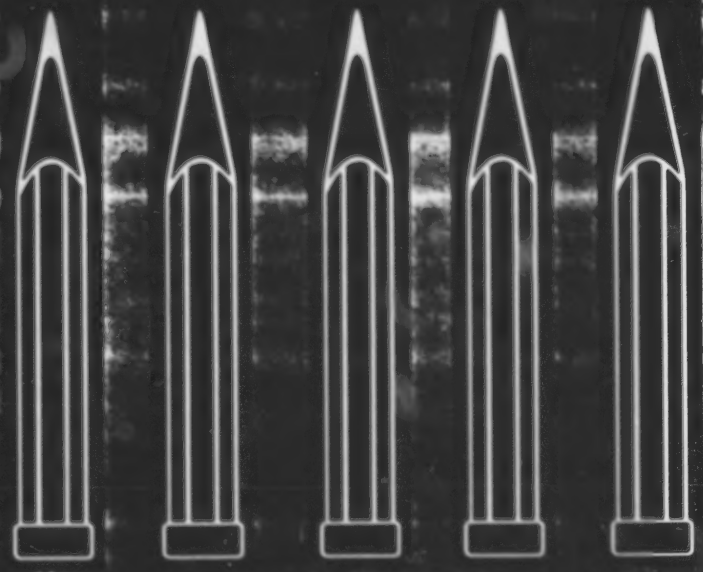

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A Note from the Editors

What's in the Booklet?

There's no better opportunity to teach about the law than when a sensational trial is overwhelming the media. The O. J. Simpson murder case is such a trial. This booklet will help you teach about

- jury selection
- the difference between direct and circumstantial evidence
- admissible and inadmissible evidence
- the meaning of "beyond a reasonable doubt"
- the difference between a trial and a penalty hearing
- the meaning of "burden of proof."

This carefully prepared booklet is filled with easy-to-understand background material, commonly asked questions (and their answers), a Glossary list (entries are boldfaced where they first appear in text), plus an array of learning activities that include something to share at home. This is bound to be one of the most helpful instructional aids you will use this year.

To order additional copies of this teaching tool, contact American Bar Association/YEFC, 541 N. Fairbanks Court, Chicago, IL 60611-3314; (312) 988-5735. For classroom sets, ask about our bulk-order pricing.

Teacher's Instructions

Begin by asking students what they know about the O. J. Simpson murder case. For example, ask them to focus on the known evidence in the case. Have students bring in relevant newspaper and magazine articles, if necessary. Use this opportunity to introduce and discuss the terms *direct evidence* and *circumstantial evidence*, and encourage students to identify which evidence falls into which category.

Continue to explore students' knowledge of relevant vocabulary as well as current events before reading aloud the information about California trial law and the questions and answers about the O. J. Simpson case. If possible, give individuals, pairs, or small groups of students copies of the text and the Glossary. After they have read the text, have them answer the questions in the Glossary either orally or in writing.

Case Studies in Law-Related Education

The section Case Studies in Law-Related Education provides strategies for using case studies to develop an understanding of law-related issues and events. It identifies the three steps of the judicial process and information about ways societies try to redress wrongdoing. Students can use the Case Study Worksheet to guide their analysis of a case. You may want to introduce the Case Study Worksheet and the judicial process steps before reading the information about California law and the questions and answers about the O. J. Simpson case to students.

(continued page 3)

Anita Richardson is the editor of the American Bar Association's Preview of the United States Supreme Court Cases *and adjunct professor at the John Marshall Law School in Chicago, Illinois.*

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Take a Stand

As people learn more about the law and legal system, they begin to confront the many conflicts that challenge it. That is, "fair" solutions may not be perceived as "fair" by all citizens. "Fair" may not be in accordance with the legal process in a given case.

This activity offers an opportunity to practice two important responsibilities of citizens: (1) developing reasoned opinions regarding the validity of political/legal policy and (2) respecting the views/opinions of others. Students are asked to review several policy statements and to "take a stand" by agreeing or disagreeing with the statements and providing reasons for their opinions. You then discuss and analyze the reasons to determine their source, strength, and importance.

Penn & Shoen's Attorney Poll

The survey on the back cover is based on a survey form sent to attorneys across the nation. Copy two forms for each student. Distribute a copy of the form to the students and ask them to complete it. Tell students that they should not put their names on their survey form so that results will be anonymous. After they complete the survey, review the questions and encourage class discussion. Then have students compile the class survey data.

Give students another survey form to take home for a family member to express his or her views about the O. J. Simpson case. Ask them to return the forms and to compile the data.

Identify the results of the Penn & Shoen's attorney poll, and ask students to compare the results to those of the attorneys.

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Poll Information and Results

The attorneys in the Penn & Schoen poll came from every region in the nation and represent at least 16 legal specialty areas. Eighteen percent of the attorneys practice criminal law. Of those, 11 percent are prosecutors and 87 percent are defense attorneys. Ninety-four percent are white, and 88 percent are male.

Findings were that 61 percent of the lawyers in the poll thought that O. J. Simpson will be acquitted or subject to retrial. Twenty-two percent thought that he will be acquitted of the charges, while 39 percent felt the jury will be hung. Seventy-eight percent felt that the pretrial publicity makes getting a fair trial less likely for O. J. Simpson; 64 percent said that his fame as a star, sportscaster, and actor will also hurt his chances for a fair trial. Forty-two percent said O. J. Simpson's race will work in his favor; 12 percent felt conviction would be easier, and 45 percent didn't know. Sixty-six percent said the prosecution's decision not to seek the death penalty does not reflect any special treatment of O. J. Simpson, and 28 percent said it does. Seventy-two percent wanted the judge to impose a gag order. Seventy-eight percent said pretrial publicity has been generally damaging to O. J. Simpson's chances. Forty percent said the media coverage favored both sides or neither, 29 percent said the coverage favored the prosecution, and 23 percent said that it favored O. J. Simpson. Forty-seven percent thought that both the prosecution and the defense in this case were doing a good job.

The O. J. Simpson Case

The state of California (the prosecution) has charged O. J. Simpson with two counts of first-degree murder. Specifically, he has been accused of the "willful, deliberate, and premeditated" killing of his ex-wife Nicole Brown Simpson and her friend Ronald Goldman. The prosecution had the option of seeking the death penalty or life imprisonment without parole. It is seeking life imprisonment without parole. The prosecution has not revealed how or why it reached this decision.

Because this is not a death-penalty case, the trial will not include a sentencing phase. If a unanimous jury finds O. J. Simpson guilty of one or both murders charged, he will be given life imprisonment without parole—the sentence for first-degree murder without any special circumstances. He would likely appeal such a sentence. If the jury finds him innocent, all charges will be dropped and he will be freed. If the jury is hung, or cannot reach a decision, O. J. Simpson could be retried.

Trial Phase

Criminal law varies from state to state. In California, **first-degree murder** trials have two phases when the death penalty is sought. The first is the **trial phase**, also called the **guilt-innocence phase**. The second is the **sentencing phase**.

During the trial phase, any evidence showing the way victims were killed and establishing a **motive** and plan of action will tend to prove that the killings were **willful, deliberate**, and **premeditated**.

In law, the **burden of proof** is the necessity to demonstrate that something is true. In a case of this type, the prosecution is not required to *prove* that a defendant had a motive for committing the crime. But it might decide to introduce evidence to that effect to establish that a murder was willful, deliberate, and premeditated.

Elements of Murder For example, the prosecution will seek to prove that a defendant is, indeed, the one who attacked (shot, beat, stabbed, poisoned) a victim, that the injuries to the victim resulting from the attack were the **proximate** ("immediate" or "direct") cause of the victim's death, that the defendant intended to kill, and that the defendant premeditated the killing, however briefly.

Beyond a Reasonable Doubt In California, a conviction for first-degree murder requires the unanimous verdict of a 12-person jury. If the jury is to convict the defendant of murder, its members first have to be convinced of the person's guilt **beyond a reasonable doubt**. By California law, this does not mean possible doubt but "an abiding conviction, to a moral certainty" that the charges are true.

Preponderance of the Evidence Murder defendants sometimes enter pleas of not guilty by reason of insanity. They may also change their plea from not guilty to not guilty by reason of insanity up to a designated point in their trial. If their plea prevails, they will go to some sort of rehabilitation facility. Depending on the state, once cured, they will be freed or sent to prison to complete their sentences. (In some states, this plea, when successful, is not recognized as an **acquittal**, or finding of innocence. The defendant, once rehabilitated, is required to serve the balance of the sentence.)

Some states require that defendants prove an insanity plea with a "clear and convincing showing." Others, like California, require proof by a **preponderance of the evidence**. This is evidence that would make it "more probable than not," even if by the slightest degree, that a

defendant was insane at the time the offense occurred. Proving something by a preponderance of the evidence is easier for the defense than proving it beyond a reasonable doubt or by a clear and convincing showing, which requires a much higher level of certainty from the jurors.

Relevant Evidence All relevant evidence is admissible in a trial. Evidence is relevant when it tends to make a disputed fact more probable than not. But relevant evidence is not automatically admissible. Such evidence will be excluded if it is so inflammatory, or provocative, in nature so as to threaten the jury's impartiality, or if it tends to prove the same point as other relevant evidence already admitted.

There are different categories of relevant evidence: **physical evidence** or **testimonial evidence** and **direct evidence** or **circumstantial evidence**.

Physical evidence consists of such things as victims' bodies and murder weapons. *Testimonial evidence* consists of oral statements given under oath that relate to such factors as the crime, the elements of the crime charged, and the defendant's defense (for example, an alibi). Testimonial evidence falls into different categories: for example, testimony of witnesses about the victim or the **perpetrator**, testimony of police investigating the case, and testimony of expert witnesses about the nature and meaning of the prosecution's evidence.

Direct evidence is intended to establish a fact beyond question and may include the testimony of eyewitnesses to a crime, or a written or taped death threat. Direct evidence is sometimes referred to as the "smoking gun."

Circumstantial evidence may strongly suggest something, but it does not provide direct proof.

Fifth Amendment The **Fifth Amendment** to the U.S. Constitution has several guarantees for people accused of crimes. These include that they may not be forced to testify against themselves or be tried twice for the same crime. Defense attorneys most often advise their clients not to testify in the event that their testimony might tend to "incriminate," or harm rather than help, in the effort to prove their innocence.

Special Circumstances First-degree murder in California is **capital murder**, for which possible punishment is either death or life imprisonment without the possibility of parole. Whenever seeking the death

Retrial is not automatic. Prosecutors have to decide whether to retry defendants. Those who think that the first jury was sympathetic to a defendant may decide to retry the case. Those who think that the first jury was not persuaded by the evidence may decline to retry.

The four elements of the offense of first-degree murder in the O. J. Simpson case are

1. **That O. J. Simpson was the person who stabbed Nicole Brown Simpson and Ronald Goldman.**
2. **That the stabbings were the proximate cause of the victims' deaths.**
3. **That O. J. Simpson intended to kill the two victims.**
4. **That the killings were not committed on impulse, but instead were the result of planning, however brief.**

Questions and Answers About O. J. Simpson's Trial

Q. What plea did O. J. Simpson enter?
A. O. J. Simpson entered a plea of not guilty to two counts of first-degree murder.

Q. What, if anything, must O. J. Simpson prove at his trial?
A. Under California law, he does not have to prove anything. However, if the prosecution submits proof sufficient to permit the jury to find beyond a reasonable doubt that O. J. Simpson committed first-degree murder with respect to Nicole Brown Simpson or Ronald Goldman, O. J. Simpson is entitled to introduce evidence that raises a reasonable doubt as to the prosecution's evidence of his guilt.

Q. What would be some of the relevant evidence in O. J. Simpson's case?
A. Any evidence that tends to establish that O. J. Simpson was not, as he states, at home when the killings occurred would be relevant in establishing that this alibi is false and that he could instead have been at Nicole Brown Simpson's home when the killings occurred.

penalty in this state, the prosecution must prove that at least one of nineteen **statutorily** (by law) defined **special circumstances** is true beyond a reasonable doubt. Some of these circumstances are that the murder was intentional and committed for financial gain; that it was intentional and involved torture; that it was committed to prevent a lawful arrest or to attempt to escape from lawful custody; that the victim was killed because of his or her race, color, religion, nationality, or country of origin; or that the defendant has been convicted of more than one offense of first-degree murder.

The jury has to decide whether the prosecution has proven at least one of the special circumstances it uses. All 12 jurors must find that at least one special circumstance is true in order for the defendant to be eligible for the death penalty.

At the end of the trial phase, if the jury finds the defendant innocent of the charges, all charges will be dropped and the defendant will be acquitted and freed. If it finds the defendant guilty of the murder charged and the death penalty was not sought, the defendant will be sentenced to life imprisonment without parole.

When the death penalty is sought, and the jury finds the accused guilty and unanimously votes that at least one special circumstance existed, the case goes into a sentencing phase (see below). During this phase, a **penalty hearing** is conducted to determine whether the guilty person will be sentenced to death or life imprisonment without parole.

There are any number of reasons why the prosecution may decide to seek either penalty. While there may be some evidence to prove a special circumstance, for example, the prosecutor may not feel that the evidence is strong enough to meet the beyond-a-reasonable-doubt standard. If the defendant is a famous and popular person, the prosecution may decide that conviction would be too difficult because the jury may not want to impose the death penalty. To avoid that decision, the jury might in fact find the defendant not guilty.

High-Profile Trials

Rights to Free Press and Fair Trial Most trials are conducted with little or no media involvement. However, when a famous person is the defendant in a sensational, high-profile trial, there may be extensive coverage on TV and radio and in the newspapers and magazines both before and during the trial. Whenever there is pretrial and trial publicity, two constitutional rights come into conflict.

The first right is the free-press right under the First Amendment, which guarantees the public's right to the free and open dissemination, or spread, of information. The second right is the defendant's right, under the Sixth Amendment, to a fair trial by an open-minded jury.

Attorneys' Responsibilities The attorneys for both the prosecution and the defense are under pressure to provide information to the press and public when a trial involves a famous person. Since they represent

opposing interests, they naturally want to use the media to put the best spin on the interests of the side they represent.

But the prosecution will not ignore a defendant's rights. As officers of the court, all attorneys involved in a case are obligated to ensure that any comments made to the media preserve the integrity of the judicial process and the defendant's right to a fair trial by an impartial jury.

Limits on Attorneys' Free Speech Rights While the First Amendment protects an attorney's right to speak to the media, states may still place reasonable limits on attorneys in order to preserve a defendant's fair-trial rights.

In California, law governing attorney conduct does not directly address attorneys' pretrial and trial comments to the media in a criminal case. Instead, the trial judge evaluates such comments and often tells the attorneys how far they may and may not go in talking to the press. Limits that judges impose on attorney speech may be called gag orders.

The judge bases his or her evaluation of an attorney's comments to the media on the general rule that comments likely to influence potential and actual jurors' views, and the trial's outcome, are improper because they violate the defendant's Sixth Amendment rights.

Jury Selection and Voir Dire Since most potential jurors in a high-profile case can be expected to have some knowledge of the case, jury selection focuses on determining the extent of the information potential jurors might know, and the extent to which they might be influenced by that knowledge. The process used to answer these questions is called **voir dire.**

During voir dire, the attorneys for both sides question potential jurors about their ability to be fair and impartial, to determine the facts of a case solely from the evidence presented at trial, and to apply the law to the facts as established by the evidence. Many potential jurors are dismissed in high-profile cases because they have already formed opinions.

Sequestered Jury More than likely, once selected, the jury in a high-profile trial will be **sequestered**, or separated from the routines of their daily lives, in order to minimize their exposure to media coverage of the trial.

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Q. Is DNA evidence relevant?
A. Yes, the DNA evidence is relevant in establishing that blood found at the scene of the killings could be O. J. Simpson's.

Q. Is there any possibility that O. J. Simpson's past abuse of his ex-wife might be admitted as evidence?
A. O. J. Simpson's past abuse of Nicole Brown Simpson is not admissible to support the prosecution's position that he actually committed the two murders. But the judge might admit this evidence as relevant to establishing that he had a motive, an intent, or a plan of preparation to kill her. On the other hand, the judge might view this evidence as too inflammatory, even on the issue of motive, to be admitted. This type of evidence would have been admissible at the penalty hearing if the prosecution had sought the death penalty.

Q. What physical evidence exists in the O. J. Simpson case?
A. The physical evidence consists of the victims' bodies, blood stains at various locations and all analyses of these stains, including those of the DNA, the

bloody glove, and any other similar evidence that the prosecution might introduce.

Q. What will the testimonial evidence consist of?
A. The testimonial evidence will fall into three categories: testimony of witnesses as to O. J. Simpson's and the victims' movements, testimony of police investigating the case, and testimony of the prosecution's and defense's expert witnesses about the nature and meaning of the prosecution's evidence.

Q. Will O. J. Simpson testify at his trial?
A. The Fifth Amendment shelters O. J. Simpson from having to testify at the trial.

Q. Is there any direct evidence in the O. J. Simpson case?
A. There is very little, if any, direct evidence regarding the killings or who committed them. In fact, most of the evidence considered will be circumstantial.

Q. How will the prosecution use circumstantial evidence in this case?
A. The prosecution will have to rely on both physical and testimonial circumstantial evidence to

Sentencing Phase

In California, the same jury serves for both the trial phase and the sentencing phase. Thus, the same people decide whether a defendant is guilty or innocent and, if convicted, whether to sentence that person to death or life imprisonment without parole. The only exception is when this jury cannot reach a decision on the penalty, in which case the judge will **impanel,** or put together, another jury. If the second jury deadlocks, the judge may either impanel a third jury or sentence the defendant to a term of 25 years in prison.

At the penalty hearing, the prosecution introduces evidence intended to demonstrate that the convicted murderer should get the death penalty. This evidence is called **relevant aggravating factors.** The defense, on the other hand, introduces evidence to show that putting the murderer to death is not warranted, but that life imprisonment without parole is the appropriate sentence for the jury to reach. This evidence is called **relevant evidence of mitigation.**

Relevant Aggravating Factors This evidence includes the jury's determinations during the trial phase that the defendant is guilty and that one or more special circumstances charged by the prosecution are true. In addition, the prosecution can be expected to introduce evidence of prior criminal convictions and evidence of violent activity even if no criminal charge was made or conviction obtained. This evidence is intended to show that the guilty person is a threat to society.

During the trial phase, judges are unlikely to admit evidence of past criminal or violent behavior. Instead, they most often make the prosecution hold such evidence for the sentencing phase (after guilt has been established beyond a reasonable doubt) because such factors are highly **prejudicial** to a fair and impartial determination of guilt or innocence. That is, this evidence might influence the jury's decision of the defendant's guilt or innocence relative to the actual case at hand.

For example, factors such as a prior murder conviction could lead a jury to conclude that the defendant murdered again. Admitting such evidence might tend to put the defendant on trial for both offenses instead of the one charged, violating the defendant's right to a fair trial. Such evidence, however, is often admissible during the sentencing phase once guilt has been established beyond a reasonable doubt.

Relevant Evidence of Mitigation This evidence, which defense attorneys introduce to support a penalty less than death, might include poverty and squalid living conditions, sexual abuse or other exploitation as a child, and an absence of prior criminal activity.

Sentencing After all relevant evidence in aggravation and mitigation has been introduced, the sentencing jury in California is required to weigh the evidence. If it finds that the evidence in aggravation outweighs the evidence in mitigation, the jury imposes the death penalty. If it finds the reverse, it imposes life imprisonment without parole.

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Appeals

State law provides for appeals once a murder conviction has been reached. In California, the appeal goes automatically to the state supreme court after the conviction and sentencing of any capital defendant sentenced to death.

There are several kinds of issues that defense attorneys are likely to raise on appeal. For example, they may object to the judge's rulings on the admissibility of evidence, the scope of the prosecution's arguments to the jury, or the way the prosecution examined and cross-examined witnesses. In addition, the appeal might challenge certain pretrial rulings from the judge, such as the denial of a motion to suppress evidence seized without a search or an arrest warrant.

Raising these issues would enable the defense attorneys to argue that judge's errors entitle the defendant to a new trial. In a death-penalty case, defense attorneys might argue for a new sentencing hearing.

REUTERS/BETTMANN

establish that only O. J. Simpson could have been the killer.

Q. What circumstantial evidence will the prosecution have at trial?
A. Examples are the physical evidence of blood type and the DNA testing results, the bloody glove, O. J. Simpson's trip to Chicago, and statements that he was not at home at the approximate time of the killings.

Q. Why is pretrial and trial publicity an issue for this trial?
A. Since this trial is the much-publicized trial of a famous person, it brings two constitutional rights into conflict: O. J. Simpson's Sixth Amendment right to a fair trial by an open-minded jury, and the public's First Amendment free-press right to the free and open dissemination of information about the crime.

Q. How can an impartial jury be selected for the O. J. Simpson trial?
A. As in other much publicized trials, the attorneys will rely on the process of voir dire, through which they will attempt to determine what potential jurors might already know about the case and how much they might be influenced by their prior knowledge. Many potential jurors will be dismissed during this process

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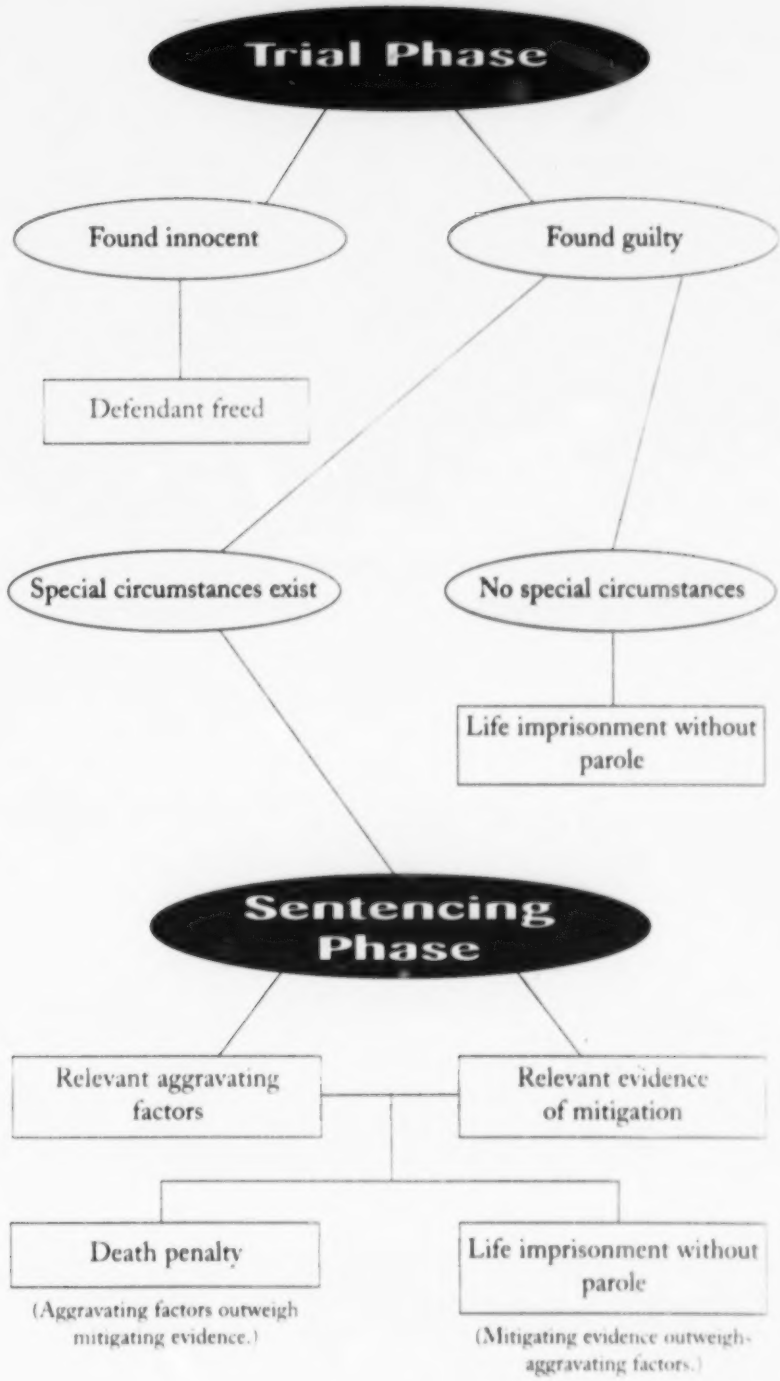
because they have already formed opinions about O. J. Simpson's guilt or innocence based on media coverage.

Q. How long will jury selection take?
A. Because of the level of publicity in this case, jury selection may take several weeks. By the end of the process, the judge, the prosecution, and the defense must all be satisfied that an impartial jury has been assembled.

Q. What happens if O. J. Simpson is acquitted?
A. If he is acquitted, all charges against him will be dropped, the case will be over, and he will be freed.

Q. And what if he is found guilty?
A. If found guilty, O. J. Simpson will be sentenced to life imprisonment without parole. He would likely appeal such a conviction.

Two Phases of a California First-Degree Murder Trial



Glossary: Know These Terms

A

Acquittal means "a finding of innocence." What will happen if O. J. Simpson's trial results in an *acquittal* of all the charges against him?

B

Beyond a reasonable doubt means, in California, that each of 12 jurors "is convinced, to a moral certainty, that the charges against someone are true." What evidence has the prosecution offered so far to help establish that O. J. Simpson is guilty *beyond a reasonable doubt?*

Burden of proof, in law, is the necessity to show that something is true. Does the *burden of proof* as to O. J. Simpson's guilt or innocence lie with the prosecution or the defense?

C

Capital murder is murder for which the accused could be sentenced to death. Has O. J. Simpson been accused of *capital murder?* Why or why not?

Circumstantial evidence may strongly suggest something, but it does not provide direct proof. Why is *circumstantial evidence* critical in O. J. Simpson's case?

D

Deliberate, in the context of committing a crime, means "as a result of careful thought and weighing the considerations for and against committing the crime." What type of evidence might indicate that O. J. Simpson did not commit the *deliberate* murder of his ex-wife? of her friend?

Direct evidence is evidence intended to conclusively establish a specific fact. What are some types of *direct evidence?*

F

Fifth Amendment has several guarantees for people accused of crimes. These include that they may not be forced to testify at their own trials, and they may not be tried twice for the same crime. Why do defense attorneys most often counsel their clients not to waive their *Fifth Amendment* right not to testify?

First-degree murder is premeditated murder committed deliberately with malice aforethought, with extreme cruelty, or in connection with another crime or attempted crime, that is punishable by death or life imprisonment. Why is the prosecution charging *first-degree murder* in the O. J. Simpson case?

G

Gag orders are limits judges impose on attorney comments to the media about a case. Why do judges impose *gag orders* on attorneys?

Guilt-innocence phase (see *Trial phase*).

I

Impanel means "to put together, as a jury." When might California judges *impanel* new juries during the sentencing phase of a capital trial?

M

Motive means "an idea, belief, emotion, or other state of mind that causes someone to do something." Do you think O. J. Simpson had a *motive* for killing his ex-wife? her friend? Why or why not?

P

Penalty hearing takes place during a trial's sentencing phase, after someone has been convicted of first-degree murder and the jury has determined that at least one special circumstance exists. What two sentences are considered at a *penalty hearing* in a capital case?

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Perpetrator is someone who commits a crime.

Physical evidence consists of things such as victims' bodies, blood stains, and analyses of these stains. What *physical evidence* is being analyzed in the O. J. Simpson case?

Prejudicial is a term used to describe evidence that could lead a jury to decide that a defendant committed one crime because he or she committed another one. Such evidence is most often not admitted during the trial phase. Why might *prejudicial* evidence be admitted during a penalty hearing?

Premeditated means "considered beforehand," if only for an instant. What type of evidence might make the jury think that O. J. Simpson *premeditated* killing his ex-wife and her friend?

Preponderance of the evidence, most often used in civil cases (which settle disputes rather than determine guilt of a crime), is a standard, or requirement, of proof by which a jury, in reaching a particular decision, must conclude that something is more likely than not, even if by the slightest degree. (Compare with *beyond a reasonable doubt*.) Name one circumstance where the *preponderance of the evidence* standard is used in a criminal trial.

Proximate means "immediate." What was the *proximate* cause of death in the murders of Nicole Brown Simpson and Ronald Goldman?

Relevant aggravating factors, introduced during the sentencing phase of a capital trial, are circumstances that warrant the death penalty. What types of *relevant aggravating factors* might the prosecution introduce to get a death-penalty conviction?

Relevant evidence of mitigation is evidence that the defense presents during the sentencing phase of a capital trial in order to support a penalty less than death, such as life imprisonment. What *relevant evidence of mitigation* might the defense offer to prevent a sentence of death?

Sentencing phase follows the trial phase in a capital case and, in California, occurs after the jury has voted unanimously that at least one special circumstance exists. What is conducted during the *sentencing phase?*

Sequestered means "separated from the routines of daily life." For what reason will the jury for O. J. Simpson's trial most likely be *sequestered?*

Special circumstances, in California, are 19 statutorily defined situations, any one of which, if proved to the jury beyond a reasonable doubt, makes the defendant eligible for the death penalty. The jury vote must be unanimous that one or more special circumstances exists. Name two *special circumstances* that may apply to first-degree murder trials in California.

Statutorily means "by law." What is an example of something *statutorily* defined by California law?

Testimonial evidence is evidence given in testimony by witnesses during a trial. What are three types of *testimonial evidence* that will be used at O. J. Simpson's trial?

Trial phase (also called ***guilt-innocence phase***) establishes whether or not an accused person is guilty of a crime. Why is O. J. Simpson's case being limited to a *trial phase?*

Voir dire is the process by which potential jurors are questioned about (1) their ability to be fair and impartial, (2) their ability to determine the facts of a case solely from the evidence presented at trial, and (3) their ability to apply the law to the facts as established by the evidence. Why might the *voir dire* phase of O. J. Simpson's trial take a long time?

Willful means "intentional." How might the prosecution try to prove that O. J. Simpson's alleged murder of his ex-wife was *willful?* of her friend?

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Case Study in Law-Related Education

Examining case studies is an effective means of presenting law-related issues. Before beginning a case study, introduce and discuss the three steps in the judicial process and the three major ways in which all societies try to right wrongs or redress grievances. Then use one of the following strategies for your case study.

Strategy I

1. Give each student a copy of the Case Study Worksheet and the case to be considered and evaluated.
2. Students should carefully read the case, using the worksheet as a guide.
3. Each student should individually complete the worksheet.
4. Debrief the exercise with students, using the following questions to guide the discussion:
   - What are the facts in this case?
   - Which facts are most important?
   - Who has been wronged? How?
   - What person(s) is at fault? Why?
5. Following discussion of the facts and issues of the case, divide the class into groups of three charged with deciding what should be done to right the wrong(s) that have been committed.
6. Give each group 10 minutes to discuss the case and reach a decision.
7. Each group should orally present its decision and the reasons for making it to the class.

Strategy II*

1. Begin by dividing the class into groups of three. Each group will constitute "the judges" or "hearing officers" for the case.
2. The judges should read the case carefully several times.
3. The judges should then consider the following questions:
   - What are the facts in this case?
   - Who has been wronged? How?
   - Who is most at fault in this case? Why?
   - What other person or persons also are at fault? Why?
   - What should be done to right the wrongs that have been done?
   - Should those who have been wronged be repaid or compensated in some way? If so, how? By whom?
   - Should those who did wrong be punished? If so, how? By whom?
   - Should any persons involved in this case be counseled or given advice/help? If so, what kind of counseling do they need? Who should provide that counseling?
4. Each group of judges should present its findings orally.

After using either strategy for analyzing the case, have the class conclude the activity by comparing and discussing each group's decision and its implications. This should lead to a lively discussion of rights, wrongs, and remedies, giving students insights into the quest for justice that confronts all of us daily.

**Adapted by Mabel McKinney-Browning, ABA, 1983*

STEPS IN THE JUDICIAL PROCESS

Prior to using a case study, talk informally with students and explain briefly these steps in the judicial process:

Step 1: The facts must be found. If the case is to proceed further, it must be established that a person's or a group's rights have been infringed upon.

Step 2: Responsibility for what has happened must be determined through whatever the appropriate procedures of inquiry and adjudication, or method of decision, are. That determination could be made through informal hearings, or it could be made through formal hearings and trials.

Step 3: Decisions must be made about how wrongs are to be righted or grievances redressed.

HOW DO WE RIGHT WRONGS?

The methods in which wrongs are righted and grievances are redressed vary from society to society worldwide. Nevertheless, regardless of the society and the particular issues involved in a case, these methods tend to fall into one of three categories:

1. **Compensating the Injured Party** When it has been agreed that a person has been wrongfully deprived of something—possessions, job, good name, or health—that person may be compensated in some way. For example, if a person is wrongfully deprived of health because of an automobile accident, the wrongdoer may be ordered to pay damages. If a person has been wrongfully deprived of a job, the wrongdoer may be ordered to restore the job and to pay the person for the time she or he was out of work.
2. **Punishing the Wrongdoer** Punishment for a wrongdoing can take many forms. The most frequently used punishments are fines, seizure of property, corporal punishments, and banishment.
3. **Counseling** This method is especially important in cases in which the opposing parties must continue to live or work together. For example, the school principal, a town leader, or a judge in a court of law may talk with those concerned, trying to get them to understand their roles and their obligations to one another and to society. Or the "counselor" may try to get the parties to agree to put aside past differences and to try to live peacefully together in the future.

Excerpt from: "Teaching Global Law" by Margaret Stimmann Branson in Update on Law-Related Education, *Vol. 4, No. 3, Fall 1980.*

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Case Study Worksheet

I. FACTS

- What are the facts in this case? (List on a separate sheet of paper)
- Now look carefully at each fact you have identified. Under each category below, list the appropriate "facts."

1. Which facts in this case are facts that cannot be questioned?

2. Which facts in the case are inferred from (suggested by) other facts, but are not actually stated?

3. What else do you need to know? List the facts that are missing from the case.

4. Which facts will be most important in deciding the outcome of this case?

II. ISSUES

- Who is involved in this case?

- What does each person/group involved want to happen?

- What is the most important issue in this case?

III. DECISION

- How would you judge this case? Circle one.

1. Punish the wrongdoer.
2. Give something to the injured person to make up for what has happened.
3. Talk to the people involved and help them work out the problem.

- Explain your reasons for making this decision.

- Given your decision, describe what will happen after the person leaves the court or hearing.

Adapted by Mabel McKinney-Browning, ABA, 1983

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Take a Stand

Directions: Read the following statements. In the space provided, circle to indicate whether you (**A**) agree or (**D**) disagree with each statement. If you cannot decide, circle (**U**) undecided. Under each response, indicate at least one reason for your opinion.

1. When there has been heavy media coverage of a famous person's case, it is impossible to assemble an impartial jury.
   A D U
   Reasons:

2. All criminal trials should be televised.
   A D U
   Reasons:

3. To be judged by "peers," defendants must be judged only by persons of their own economic level.
   A D U
   Reasons:

4. People found not guilty after being put through a capital murder trial should be able to collect their attorney fees from the government.
   A D U
   Reasons:

Do You Agree with the Attorneys?

In trying to gauge the opinions of attorneys toward the outcome of the O. J. Simpson case, Penn & Schoen Associates, Inc., a New York company, conducted a random poll of 311 attorneys September 23–26, 1994. Below are some of the types of information Penn & Schoen asked about.

Take this public opinion poll, and see how your opinions compare with those of the attorneys (on page 3). If you are in a study group, compile and compare the group results as well.

Circle one for each question.

Yes	**No**	**Don't know**	1. Will O. J. Simpson beat the charges and go free? *[If answer is no, skip to question 4.]*
Yes	**No**	**Don't know**	2. Will O. J. Simpson be acquitted of murder charges?
Yes	**No**	**Don't know**	3. Or will O. J. Simpson be acquitted because the jury is hung?
Yes	**No**	**Don't know**	4. Will the pretrial publicity in the case make it less likely that O. J. Simpson will get a fair trial?
Yes	**No**	**Don't know**	5. Will O. J. Simpson's fame from years as a football star, sportscaster, and actor hurt his chances for a fair trial?
Yes	**No**	**Don't know**	6. Will O. J. Simpson's being an African American make conviction less likely?
Yes	**No**	**Don't know**	7. Does the prosecution's decision not to seek the death penalty show special treatment of O. J. Simpson?
Yes	**No**	**Don't know**	8. Should the judge impose a gag order on the attorneys?
Yes	**No**	**Don't know**	9. Has the pretrial publicity been generally damaging to O. J. Simpson's chances of acquittal?
Yes	**No**	**Don't know**	10. Does the media coverage favor both sides?
Yes	**No**	**Don't know**	11. Does the media coverage favor neither side?
Yes	**No**	**Don't know**	12. Does the media coverage favor the prosecution?
Yes	**No**	**Don't know**	13. Does the media coverage favor the defense?
Yes	**No**	**Don't know**	14. Is the defense doing a good job?
Yes	**No**	**Don't know**	15. Is the prosecution doing a good job?

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